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## REDUCING THE RATE OF PRISON RECIDIVISM IN FLORIDA BY PROVIDING STATE CORPORATE INCOME TAX CREDITS TO BUSINESSES AS AN INCENTIVE FOR EMPLOYMENT OF EX-FELONS

Heidi A. Hillyer \*

### I. INTRODUCTION

Lonnie Hunt, an ex-felon who was released after serving four years in prison on a robbery charge, received a second chance when he was hired by a local plumbing company willing to take a chance by hiring him.<sup>1</sup> Hunt, who now owns a construction company in Oklahoma City, wanted to repay the kindness shown to him by hiring ex-offenders.<sup>2</sup> According to Hunt, because potential employees with felony convictions have difficulty finding a job after being released from prison, when they are hired they appreciate the opportunity to work and become dedicated workers who want to hold on to their new jobs.<sup>3</sup>

Lou Ann and Andy Amstutz own a small machine and manufacturing company and have hired more than a dozen former felons.<sup>4</sup> Not every employee hired by the couple has been a model employee, however, Lou Ann and Andy have found that ex-offenders who have repaid their debt to society appreciate the opportunity to have a job and want a second chance to prove themselves as workers.<sup>5</sup> Accordingly, the company has never experienced a problem with workplace safety or theft.<sup>6</sup>

In the United States, over 750,000 felons are released from prison each year.<sup>7</sup> According to a study conducted on prison releases from thirty-three states by the Pew Center on the States, it is estimated that, on average, over four out of ten inmates will commit new crimes and be returned to state prisons within three years

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1. Joe Wertz & Logan Layden, *Ex-Offender Helps Build Careers by Giving Felons Work*, NPR STATE IMPACT: OKLA. (July 12, 2012), <http://stateimpact.npr.org/oklahoma/2012/07/12/ex-offender-helps-build-careers-by-giving-felons-work/>.

2. *Id.*

3. *Id.*

4. Kevcol, *Federal Funds [\$1,000,000.00] to Help Tulsans with Criminal Records Find Jobs*, FREE REPUBLIC. (July 14, 2012, 9:55 AM), <http://www.freerepublic.com/focus/news/2906470/posts> (citing Jaime Adame, *Felons Apply Here*, URBAN TULSA WKLY. (July 11, 2012), <http://www.urbantulsa.com/gyrobase/Content?oid=5074>).

5. *Id.*

6. *Id.*

7. Patw, *Tools for America's Job Seekers Challenge, Ex-Offenders-Giving Employers a \$2400 Reason to Hire Them*, DOL JOB TOOL CHALLENGE, [http://dolchallenge.ideascale.com/a/dtd/Ex-Offenders-Giving-Employers-a-\\$2400-reason-to-hire-them-/20611-5847](http://dolchallenge.ideascale.com/a/dtd/Ex-Offenders-Giving-Employers-a-$2400-reason-to-hire-them-/20611-5847) (last visited Jan.16, 2014).

of their release.<sup>8</sup> Recidivism is the relapse of an offender into criminal activity despite having spent time in prison.<sup>9</sup> The rate of prison recidivism addressed in this article is the percentage of persons released from prison and who are rearrested, reconvicted, or returned to custody within three years of release from prison.<sup>10</sup> In 2008, the percentage of prisoners released from Florida prisons and returned to prison within three years of their release was 27.6%.<sup>11</sup>

Inmates with felony convictions who are released from prison have difficulty finding jobs and reintegrating into their homes and communities.<sup>12</sup> Employment opportunities for those with felony convictions are typically very low due to job discrimination, lack of education, limited work experience, low skill levels, fear of workplace crime, and negligent hiring liability issues.<sup>13</sup> A job applicant who must explain a criminal record is faced with stigma and bias from employers.<sup>14</sup> Newly released ex-felons who cannot find jobs and remain unemployed are more likely to commit new crimes or parole violations and are more likely to return to prison within three years.<sup>15</sup> States must devise creative solutions on limited budgets with less funding to combat these problems, reduce crime, and make communities safer.<sup>16</sup> One solution is for state and federal governments to pass legislation offering income tax credits as incentives for businesses to hire persons with felony convictions.

Florida House Bill No. 121 (2015), "Employment of Former Felons Tax Credit," was filed on December 18, 2014, and died in the Finance & Tax Committee on April 28, 2015.<sup>17</sup> In summary, the proposed bill provided for a state corporate income tax credit of \$1000 to employers that hire persons previously convicted of a felony; requirements to receive the credit; and exceptions for certain felons classified as habitual or violent offenders, and certain sexual offenders.<sup>18</sup>

8. Pew Ctr. on the States, *State of Recidivism: The Revolving Door of America's Prisons* 8, 12 (2011), [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/staterecidivismrevolvingdooramericaprison20pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/staterecidivismrevolvingdooramericaprison20pdf.pdf).

9. *Id.* at 7.

10. Patw, *supra* note 7.

11. FL. DEP'T OF CORRECTIONS, FLORIDA RECIDIVISM REPORT: RELEASES FROM 2004 TO 2011 4 (2013), <http://www.dc.state.fl.us/pub/recidivism/2012/Recidivism2012.pdf>.

12. See Jeremy Travis et al., *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, URB. INST. JUST. POL'Y CTR. 1, 32 (2001), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/410098-From-Prison-to-Home-The-Dimensions-and-Consequences-of-Prisoner-Reentry.PDF>; See also Christopher Uggen & Jeremy Staff, *Work as a Turning Point for Criminal Offenders*, 5 CORR. MGMT, Q. 1, 1-2 (2001).

13. See Travis, *supra* note 12, at 31.

14. See *id.*

15. Pew Ctr. on the States, *supra* note 8, at 2.

16. Ctr. for Study of Soc. Pol'y, *Promoting Workforce Strategies for Integrating Ex-Offenders* 2, 15, 17 (Apr. 2012), <http://www.cssp.org/policy/papers/Promoting-Workforce-Strategies-for-Reintegrating-Ex-Offenders.pdf>.

17. H.R. 121, 2015 Fla. Leg., Reg. Sess. (Fla. 2015) (proposed FLA. STAT. § 220.197 (2015)) (died in Finance and Tax Subcommittee on April 28, 2015).

18. FLA. STAT. § 220.197 (2015) (proposed):

Be It Enacted by the Legislature of the State of Florida: Section 1. Section 220.197, Florida Statutes, is created to read: 220.197 Employment of former felons tax credit. (1) For taxable years beginning on or after January 1, 2016, there shall be allowed a credit of \$1,000 against the tax imposed under this chapter to any corporation that hires a person who has been

Predecessors to Florida House Bill No. 121—HB No. 383 Employment of Felons (2014), HB No. 513 Employment of Felons (2013) and HB No. 199 Employment of Felons (2012)—also died in the Finance & Tax Committee before ever being brought before the House of Representatives for a vote.<sup>19</sup> Florida HB No. 121 is a necessary piece of legislation that should once again be revived and passed by the Florida Legislature so that the State of Florida may put former felons back to work; thus, making it less likely they will commit new crimes and return to prison.

Involvement by the federal and state government through enactment of legislation like Florida HB 121—providing incentives to employers in the form of a tax credit to hire former felons—will provide ex-felons, who are truly interested in re-entering the community, with more job opportunities and will reduce crime, recidivism, and economic dependency.<sup>20</sup> By obtaining employment and gaining financial independence, former felons will be able to earn a living, care for their families, pay child support, reduce welfare, become tax-paying citizens, and reduce long-term unemployment.<sup>21</sup> According to the Center for the Study of Social Policy, “When ex-offenders are productively engaged in their communities, working and supporting their families, the community is safer and their families are more economically secure.”<sup>22</sup>

This article supports the proposed legislation by the State of Florida offering tax credits to businesses that hire ex-felons. Initially, this article will explore the issues facing ex-felons in obtaining employment (including discrimination in employment practices and hiring decisions) professional licensing restrictions, and criminal background checks. Next, this article will compare the proposed legislation to similar programs offered by the federal government and other states, and how incentives to businesses in the form of tax credits work cost-effectively to help employers adjust their hiring policies to provide employment opportunities to ex-felons—ultimately reducing recidivism. Finally, this article will discuss the Federal Bonding Program and provide information about some of the resources that are available to both former felons and employers.

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convicted of a felony in this state and released from confinement and who remains continuously employed by the corporation for at least 1 year. The credit may be taken only once per new employee. (2) The credit under this section is not available for employment of a person who is: (a) Classified as a violent career criminal, habitual felony offender, habitual violent felony offender, or three-time violent felony offender under s. 775.084. (b) Subject to registration as a sexual predator under s. 775.21. (c) Subject to registration as a sexual offender under s. 943.0435. Section 2. This act shall take effect January 1, 2016.

*Id.*

19. See H.R. 383, 2014 Fla. Leg., Reg. Sess. (Fla. 2014) (died in Finance and Tax Subcommittee on May 2, 2014); H.R. 513, 2013 Fla. Leg., Reg. Sess. (Fla. 2013) (died in Finance and Tax Subcommittee on May 3, 2013); H.R. 199, 2012 Fla. Leg., Reg. Sess. (Fla. 2012) (died in Finance and Tax Committee on March 9, 2012).

20. See *State Tax Credits*, NAT'L HIRE NETWORK, <http://www.hirenetwork.org/content/state-tax-credits> (last updated 2007).

21. See Uggen & Staff, *supra* note 12, at 6, 14.

22. Ctr. for Study Soc. Pol'y, *supra* note 16, at 2.

## II. EX-FELONS EXPERIENCE SUBSTANTIAL BARRIERS TO OBTAINING EMPLOYMENT

### A. Negligent Hiring Liability and Workplace Violence

Employers may be fearful of hiring ex-offenders because of the risks associated with negligent hiring liability.<sup>23</sup> In a negligent hiring case, a plaintiff need only prove that an employer knew or should have known about an employee's dangerous propensity.<sup>24</sup> Because courts provide little guidance as to the connection between past crimes and current conduct, some employers would rather err on the side of caution than hire an ex-offender and open themselves to potential issues or litigation.<sup>25</sup>

The safety of other workers is another concern for employers with fifteen percent of all violent crimes occurring in the workplace.<sup>26</sup> However, the rate of violent crime against employed persons has declined since 1993, and the majority of these crimes were committed by non-employees.<sup>27</sup> Furthermore, there is no research to suggest that ex-felons are any more likely to commit crimes in the workplace than other employees who have no criminal history.<sup>28</sup>

### B. Title VII

Title VII of the Civil Rights Act of 1964 makes it unlawful for private employers and state and local governments to discriminate in employment decisions based on race, color, gender, national origin, or religion.<sup>29</sup> Title VII does not specifically prohibit pre-employment inquiries about an applicant's criminal history, but it does limit the use of such information when it has a discriminatory effect on protected classes (so called "disparate treatment" or "disparate impact").<sup>30</sup>

23. Stephen P. Shepard, *Negligent Hiring Liability: A Look at How It Affects Employers and the Rehabilitation and Reintegration of Ex-Offenders*, 10 APPALACHIAN J.L. 145, 148, 166 (2011).

24. See *Malicki v. Doe*, 814 So. 2d 347, 362 (Fla. 2002) (citing *Garcia v. Duffy*, 492 So. 2d 435, 440 (Fla. Dist. Ct. App. 1986)) (to bring a prima facie case for negligent hiring, a plaintiff must demonstrate that "(1) the employer was required to make an appropriate investigation of the employee and failed to do so; (2) an appropriate investigation would have revealed the unsuitability of the employee for the particular duty to be performed or for employment in general; and (3) it was unreasonable for the employer to hire the employee in light of the information he knew or should have known.").

25. Kristen A. Williams, *Employing Ex-Offenders: Shifting the Evaluation of Workplace Risks and Opportunities from Employees to Corrections*, 55 UCLA L. REV. 521, 524, 551 (2007) (suggesting that employers may not be the most qualified group to evaluate risk and that changes should be made to negligent hiring laws such that the analysis in a negligent hiring claim should be whether employers acted reasonably in hiring an ex-offender who is under supervision); See also *Island City Flying Serv. v. Gen. Elec. Credit Corp.*, 585 So. 2d 274, 277 (Fla. 1991) (suggesting there would need to be a close connection between the past criminal record and the conduct at issue for the employer to be found negligent).

26. U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., WORKPLACE VIOLENCE, 1993–2009, 1 (2011), <http://www.bjs.gov/content/pub/pdf/wv09.pdf>.

27. *Id.* at 2.

28. Williams, *supra* note 25, at 534.

29. 42 U.S.C. § 2000e-2(a)(1) (2015).

30. See *id.*; See also Deborah Sudbury & Elaine Rogers Walsh, *The EEOC Revisits Criminal Background Checks*, THE PRAC. LAW., Aug. 2012, at 31, 32. ("Title VII provides two theories of employment discrimination: disparate treatment and disparate impact. Although disparate treatment requires a showing of intent on the part of

Employers may refuse to hire an individual if it can be shown that his or her criminal background will have a negative effect on the place of business based on the gravity of the offense, the time passed since conviction, and the nature of the job held.<sup>31</sup>

Legislation has been enacted in some states limiting employers' use of arrest and conviction records in hiring decisions.<sup>32</sup> However, the states that limit employers' use of arrest and conviction records may have professional and trade licensing restrictions that prevents ex-offenders from obtaining employment in certain job categories including real estate, education, and healthcare.<sup>33</sup> Ex-felons may have received training while they were incarcerated but are unable to obtain employment upon release from prison because they are unable to satisfy state licensing requirements in the field in which they have been trained.<sup>34</sup>

Additionally, some ex-felons have already obtained work experience and job skills prior to incarceration but cannot find jobs because of the bias and stigma that is associated with having a criminal record.<sup>35</sup> Many employers refuse to accept applications from or to hire former felons.<sup>36</sup> According to The Sentencing Project, "Such collateral penalties place substantial barriers to an individual's social and economic advancement."<sup>37</sup> It is no wonder that when faced with enormous barriers to obtaining a job, ex-felons who cannot find employment will often fall back into crime and be rearrested within three years of their release for similar crimes, new crimes, or parole violations.<sup>38</sup>

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the employer, disparate impact requires no such discriminatory animus. Instead, as the U.S. Supreme Court explained in *Teamsters v. United States*, 431 U.S. 324, 335 n. 15 (1977), Title VII prohibits 'employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity.' As a result, assuming a disparate impact, the relationship between the applicant's criminal history and the job requirements must be affirmatively demonstrated.").

31. *Employment Background Check Guidelines*, NAT'L INST. OF BUS. MGMT. 14–15 (2008), [http://www.one2verify.com/Employment\\_Background\\_Check\\_Guidelines.pdf](http://www.one2verify.com/Employment_Background_Check_Guidelines.pdf).

32. Avi Brisman, *Double Whammy: Collateral Consequences of Conviction and Imprisonment for Sustainable Communities and the Environment*, 28 WM. & MARY ENVTL. L. & POL'Y REV. 423, 434 n.64, 437 (2004).

33. *Id.* at 434 n.64.

34. *Id.* at 433–34.

35. Brisman, *supra* note 32, at 436.

36. Kathryn Hawkins, *Why You Should Consider Hiring Ex-Convicts*, QUICKBOOKS INTUIT (May 10, 2011), <http://blog.intuit.com/employees/why-you-should-consider-hiring-ex-convicts>.

37. *Collateral Consequences*, SENTENCING PROJECT <http://www.sentencingproject.org/template/page.cfm?id=143> (last visited Jan. 17, 2014).

38. Sentencing Project, *Recidivism of State Prisoners: Implications for Sentencing and Corrections Policy*, SENTENCING PROJECT [http://www.sentencingproject.org/doc/publications/inc\\_recidivstate.pdf](http://www.sentencingproject.org/doc/publications/inc_recidivstate.pdf) (last visited Oct. 20, 2014), (noting that of state prison inmates released in 1994, 67.5% of those discharged were rearrested within three years).

### C. Discriminatory Employment Practices and Criminal Background Checks in Florida

Modeled after Title VII of the Civil Rights Act of 1964,<sup>39</sup> and subject to requirements of federal law, the Florida Civil Rights Act of 1992 governs the issue of employment discrimination in the State of Florida.<sup>40</sup> Employers in Florida are not restricted from using arrest and conviction records in employment decisions.<sup>41</sup> As long as an employer complies with the requirements of Title VII and the Fair Credit Reporting Act, the employer is free to conduct background checks on job applicants and refuse to extend offers of employment based on its findings.<sup>42</sup> The relative ease in obtaining criminal records by way of the Internet or through the use of background checks suggests that even more employers will use such inquiries when making employment decisions.<sup>43</sup> Florida law allows individuals whose criminal records have been expunged by the court to deny both the existence of the arrest and the order expunging it.<sup>44</sup> However, ex-offenders who are not honest when filling out job applications, or do not have the benefit of having their arrest record expunged, have the added hurdle of passing a background check that will likely eliminate any chance of explaining away their offenses or obtaining employment.

### D. “Ban the Box” Legislation Is Not Necessary if Employers Are Encouraged to Hire Ex-Felons

Because applicants are fearful they will not be hired they often lie about their previous convictions on their job applications.<sup>45</sup> “Ban the Box” legislation prohibits employers in some states from asking job applicants about their arrests and convictions on job applications and defers criminal background checks until later in the hiring process.<sup>46</sup> Proponents of “Ban the Box” legislation believe that by eliminating questions about prior arrests and convictions on job applications, ex-offenders have at least a fighting chance to get to the interview stage and explain

39. See, e.g., *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000) (citations omitted) (“The statute’s stated purpose and statutory construction directive are modeled after Title VII of the Civil Rights Act of 1964.”).

40. FLA. STAT. §§ 760.01–760.11 (2013).

41. See generally *id.*; § 42 U.S.C. 2000e-2(a)(1) (2015) (discusses unlawful employment practices); FLA. STAT. §§ 760.01–760.11.

42. See *Employment Background Check Guidelines*, *supra* note 31, at 2.

43. JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 165 (Jeffrey Butts et al. eds., 2005) (citing JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 109 (Oxford Univ. Press 2003)).

44. FLA. STAT. ANN. § 943.0585 (West 2014).

45. See Eli Lehrer, ‘Ban the Box’ Goes Too Far...and Not Far Enough, HUFFINGTON POST, THE BLOG (Dec. 27, 2013, 8:22 PM), [http://www.huffingtonpost.com/eli-lehrer/ban-the-box-goes-too-fara\\_b\\_4508127.html](http://www.huffingtonpost.com/eli-lehrer/ban-the-box-goes-too-fara_b_4508127.html).

46. CCH Human Resources Compliance Library, *States with “Ban-The-Box” Laws*, WESTLAW 3810665 1 (2015).

their past.<sup>47</sup> Without it, an employer may not consider the applicant at all.<sup>48</sup> Critics of “Ban the Box” legislation say that all this does is delay the discovery of prior convictions until after a background check is obtained.<sup>49</sup> Therefore, an employer with a company policy prohibiting the employment of ex-offenders is not likely to hire that person regardless of when the employer finds out about the applicant’s prior arrest or conviction.<sup>50</sup>

Encouraging employers to hire ex-offenders through incentives like income tax credits will eliminate the need for “Ban the Box” legislation. Employers who are interested in obtaining a tax credit will be encouraged to discuss prior arrests and convictions with potential new-hires.<sup>51</sup> In addition, job applications could be redesigned to include a statement that criminal records do not automatically disqualify the applicant, further encouraging an ex-offender to answer honestly when questioned about past convictions.<sup>52</sup>

### III. CORRELATION BETWEEN EMPLOYMENT AND RECIDIVISM

Despite the enormous barriers described above, studies have shown that ex-offenders who obtain employment within the first six months after release from prison have a rate of recidivism that is nearly half that of those who do not obtain employment in the first six months.<sup>53</sup> Studies suggest there is a negative relationship between employment and crime or recidivism.<sup>54</sup> While some researchers argue that crime declines with the age of the offender regardless of ties to family or workplace, others argue that these attachments can act as turning points that redirect behavior throughout the course of life.<sup>55</sup> Following this logic, older offenders are more likely to benefit from work programs than younger offenders.<sup>56</sup>

While most studies suggest that at least some criminal offenders benefit from employment, the job opportunities are limited by the stigma that comes with possessing a criminal record.<sup>57</sup> In addition, most ex-offenders re-enter the job market lacking the education and skills necessary to obtain gainful employment.<sup>58</sup>

47. Pam Fessler, *How Banning One Question Could Help Ex-Offenders Land a Job*, NAT’L. PUB. RADIO (July 14, 2014), <http://www.npr.org/2014/07/14/330731820/how-banning-one-question-could-help-ex-offenders-land-a-job>.

48. See Lehrer, *supra* note 45.

49. *Id.*

50. *Id.*

51. MI. DEP’T OF CIV. RIGHTS, *HIRING PEOPLE WITH CRIMINAL RECORDS*, [http://michigan.gov/documents/mdcr/E.PrisonerBrochure\\_498114\\_7.pdf](http://michigan.gov/documents/mdcr/E.PrisonerBrochure_498114_7.pdf) (last visited Oct. 13, 2015).

52. *Id.*

53. Uggen & Staff, *supra* note 12, at 7.

54. *Id.* at 2.

55. *Id.*

56. *Id.*

57. *Id.* See also J. Hagan, *The Social Embeddedness of Crime and Unemployment*, 31 CRIMINOLOGY 465, 472 (1993); M.L. SULLIVAN, *GETTING PAID: YOUTH CRIME AND WORK IN THE INNER-CITY* 68 (Cornell Univ. Press 1989).

58. Uggen & Staff, *supra* note 12, at 2 (noting that data from a survey in 1997 by the U.S. Department of Justice, *National Survey of State Prison Inmates*, indicated that the average offender had only 10.7 years of education and that only 56 percent of inmates were employed full-time at the time of their most recent arrest).



For the majority of ex-prisoners, employment is one of the main barriers to successful re-entry into the community.<sup>59</sup> Social service agencies, work programs, and incentive programs, in the form of tax credits to employers, have been implemented to help combat these barriers to employment and to help ease the transition back into society.<sup>60</sup>

#### IV. TAX INCENTIVES PROVIDE JOB OPPORTUNITIES FOR EX-FELONS

Recognizing that employment is directly tied to successful re-integration into society, state and federal programs offering tax credits to employers provide incentives to hire individuals who have a criminal record.<sup>61</sup> In addition, seeking employment is often a requirement of parole boards for prisoners under post-release supervision.<sup>62</sup> Former prisoners who are earning money will have an opportunity to become responsible citizens in the community and care for their families.<sup>63</sup> Ex-felons who are employed will be less likely to turn to crime and return to prison.<sup>64</sup> Obtaining employment is crucial to successful re-integration of ex-felons into society and to the promotion of public safety through crime reduction.<sup>65</sup>

According to figures released by the Florida Department of Corrections for the 2012 fiscal year, 33,295 inmates were admitted to Florida prisons and 33,137 inmates were released.<sup>66</sup> The cost to house an inmate in a Florida prison for the same year was \$17,338.<sup>67</sup> To incarcerate 100,884 inmates in Florida prisons<sup>68</sup> the Florida Department of Corrections will spend over \$2.05 billion.<sup>69</sup> These figures do not even include expenditures by the State of Florida for corrections employees' benefits, pensions, and healthcare plans; administrative costs including auditing or information technology; or the cost for the state's Department of Management Services' Bureau of Private Prison Monitoring that oversees Florida's seven private prisons.<sup>70</sup>

The cost of incarceration in the Florida prison system can be reduced by offering incentives to businesses in the form of tax credits, enabling ex-felons to

59. Kelley B. McNichols, *Reentry Initiatives: A Study of the Federal Workforce Development Program*, FED. PROB., Dec. 2012, at 37, 42.

60. Uggen & Staff, *supra* note 12, at 3.

61. See Pew Ctr. on the States, *supra* note 8, at 2; see also Uggen & Staff, *supra* note 12, at 14.

62. PETERSILIA, *supra* note 43, at 112.

63. See Pew Ctr. on the States, *supra* note 8, at 22; see also Uggen & Staff, *supra* note 12.

64. See Pew Ctr. on the States, *supra* note 8, at 2; see also Uggen & Staff, *supra* note 12, at 14.

65. See Pew Ctr. on the States, *supra* note 8, at 22; see also Uggen & Staff, *supra* note 12, at 14.

66. FLA. DEP'T OF CORR., ANNUAL REPORT: FISCAL YEAR 2012-2013 5 (2013), <http://www.dc.state.fl.us/pub/annual/1213/AnnualReport-1213.pdf>.

67. *Id.* at 8.

68. *Id.* at 38.

69. VERA INST. OF JUST., THE PRICE OF PRISONS: 40 STATE FACT SHEETS 15 (2012), <http://www.vera.org/sites/default/files/resources/downloads/the-price-of-prisons-40-fact-sheets-updated-072012.pdf>.

70. *Id.* (noting that in 2010, the FLDOC prison budget was \$2.05 billion but the total cost to taxpayers was over \$2.08 billion when other state costs including underfunded retiree healthcare (\$20.4 million), private prisons (\$2.2 million), and statewide administrative costs (\$6.7 million) were added).

obtain employment and remain employed, diminishing the likelihood they will recidivate and be returned to prison, and putting an end to the revolving doors at Florida's prisons.<sup>71</sup> Ex-felons who are earning money will be better able to support their families; pay child support; and will have a reduced need for welfare, food stamps, and public housing.<sup>72</sup> This will have a considerable economic effect on the State of Florida. Those who are employed and remain at their jobs for more than a year will reduce the effect of long-term unemployment and can become responsible, tax-paying citizens.<sup>73</sup>

### A. The Work Opportunity Tax Credit

The United States Federal Government already offers a tax credit similar to the program proposed in Florida under the Work Opportunity Tax Credit (WOTC).<sup>74</sup> The WOTC is a federal income tax credit that provides incentives to private, for-profit businesses to hire targeted groups of job seekers with significant barriers to employment including public assistance recipients, veterans, youth, and persons with felony records.<sup>75</sup> Because the WOTC is a temporary provision of the Internal Revenue Code, it must be reauthorized each year by Congress, and thus has lapsed many times since its original inception.<sup>76</sup>

Under the WOTC program, an employer that hires an ex-felon, or one of the other classes of job seekers, may claim a tax credit equal to 25% of the eligible new-hire's first year wages if the individual works at least 120 hours, up to the maximum amount of \$1500.<sup>77</sup> If the individual works at least 400 hours, the employer may claim a tax credit equal to 40% of the employee's first year's wages, up to the maximum amount of \$2400.<sup>78</sup> For example, an employer who hires an ex-felon at ten dollars per hour will receive a tax credit equal to \$300 if the employee works for 120 hours. If that same employee is hired and works for 400 hours at the same rate of pay, the employer will receive a tax credit equal to \$1600. Therefore, the amount of the tax credit increases as the hourly wage and number of hours

71. See Pew Ctr. on the States, *supra* note 8, at 30; see also Uggen & Staff, *supra* note 12, at 14.

72. See Pew Ctr. on the States, *supra* note 8 at 21; see also Uggen & Staff, *supra* note 12.

73. See Pew Ctr. on the States, *supra* note 8, at 1; see also Uggen & Staff, *supra* note 12.

74. See 26 U.S.C. § 51 (2013); see also U. S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., WOTC PROGRAM BROCHURE 1 (2013), [http://www.doleta.gov/business/incentives/opptax/PDF/employers\\_wotc\\_program\\_brochure\\_5\\_24\\_12.pdf](http://www.doleta.gov/business/incentives/opptax/PDF/employers_wotc_program_brochure_5_24_12.pdf) [hereinafter DOLETA].

75. DOLETA, *supra* note 74.

76. See U. S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., *What's New in WOTC*, <http://www.doleta.gov/business/incentives/opptax/whatsnew.cfm> (last updated Sept. 1, 2015) (noting that the WOTC program expired on December 31, 2013 required an extension and retroactive reauthorization by Congress in order to remain effective for 2014).

77. U. S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., EMPLOYER'S GUIDE TO THE WORK OPPORTUNITY TAX CREDIT 4-5 (2014), [http://www.doleta.gov/business/incentives/opptax/PDF/WOTC\\_Employer\\_Guide.pdf](http://www.doleta.gov/business/incentives/opptax/PDF/WOTC_Employer_Guide.pdf) [hereinafter DOLETA, EMPLOYER'S GUIDE].

78. *Id.* at 5.

worked increases, up to the maximum amount. There is no limit on the number of individuals an employer can hire to claim the tax credit.<sup>79</sup>

To be eligible as an ex-felon under the WOTC program, the newly hired employee must have been convicted of a felony and have a hiring date that is less than one year from the last date of conviction or release from prison.<sup>80</sup> The process for employers to claim the federal tax credit is relatively straightforward and involves filling out and submitting Internal Revenue Service (IRS) forms within twenty-eight days of the eligible employee's start date.<sup>81</sup>

Eligibility for the WOTC program is determined in one of two ways.<sup>82</sup> The job applicant may receive conditional WOTC eligibility from a participating agency, such as job corps or a local welfare agency, for the job applicant to use to market himself to an employer.<sup>83</sup> When a job offer is made, the employer then completes a pre-screening certification and submits it to the state's WOTC coordinator within twenty-eight days.<sup>84</sup> Or, more commonly, if the applicant has not received conditional eligibility, but the employer believes that an applicant is eligible for the WOTC program, the employer may submit IRS Form 8850 to the state's WOTC coordinator within twenty-eight days after hiring the applicant.<sup>85</sup>

In fiscal year 2012, of the 892,314 WOTC total certifications of employees, 22,063 of those were ex-felon certifications.<sup>86</sup> Not all certifications result in employer tax credits because the minimum retention requirement may not be fulfilled,<sup>87</sup> but it is estimated that employers claim approximately \$1 billion in tax credits each year for *all* targeted groups under the WOTC program.<sup>88</sup> The State of Florida currently uses an online portal to process federal WOTC applications.<sup>89</sup> Each week the State of Florida receives over 3000 applications to the federal WOTC program.<sup>90</sup>

79. *Id.* at 2.

80. U.S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., ELIGIBLE NEW HIRES, <http://www.doleta.gov/business/incentives/opptax/eligible.cfm/> (last updated Mar. 13, 2015).

81. DOLETA, EMPLOYER'S GUIDE, *supra* note 77, at 6–9.

82. CONG. RESEARCH SERV., THE WORK OPPORTUNITY TAX CREDIT (WOTC) 9–10 (2013), <https://www.fas.org/sfp/crs/misc/RL30089.pdf>.

83. *Id.* at 10. *But see* Gary Burtless, *Are Targeted Wage Subsidies Harmful? Evidence from a Wage Voucher Experiment*, 39 INDUS. & LAB. REL. REV. 105, 111 (1985) (suggesting that advertising oneself as a member of a subsidized group could actually reduce one's chance of getting a job).

84. CONG. RESEARCH SERV., *supra* note 82, at 10.

85. *Id.*

86. *Id.* at 11 Table 1 (using data from the Department of Labor).

87. *Id.* at 10.

88. *Id.* at 11. (emphasis added) (noting this figure includes tax credits claimed for all targeted groups under the WOTC). *See also* DOLETA, EMPLOYER'S GUIDE, *supra* note 77, at 2.

89. *See Work Opportunity Tax Credit Program*, FLA. DEP'T ECON. OPPT'Y, <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/find-tax-credit-and-incentive-programs/work-opportunity-tax-credit-program> (last visited Oct. 16, 2015) [hereinafter DEO].

90. *See DEO Work Opportunity Tax Credit Has Saved Florida Employers More Than \$200 Million in Less Than Three Years*, FLA. DEP'T ECON. OPPT'Y, [http://www.floridajobs.org/news-center/news-feed/2013/04/18/deo-work-opportunity-tax-credit-has-saved-florida-employers-more-than-\\$200-million-in-less-than-three-years](http://www.floridajobs.org/news-center/news-feed/2013/04/18/deo-work-opportunity-tax-credit-has-saved-florida-employers-more-than-$200-million-in-less-than-three-years) (last visited Nov. 26, 2015) (because the infrastructure is already in place to handle applications for the federal program, the author of this article suggests the State of Florida should be able to easily to upgrade its system in order to provide additional state income tax credit incentives on top of the federal program).

## 1. Cost-Effectiveness of Tax Credits Under the WOTC

Because the WOTC is a selective hiring subsidy in the form of a tax credit, it encourages employers to hire certain groups of individuals that the employer may not have otherwise considered.<sup>91</sup> The purpose of providing a hiring subsidy to employers is to offset the cost of hiring so that employers will make greater use of individuals from targeted groups.<sup>92</sup> According to the United States Department of Labor Employment and Training Administration, “[t]he WOTC helps targeted workers move from economic dependency into self-sufficiency as they earn a steady income and become contributing taxpayers, while participating employers are able to reduce their income tax liability.”<sup>93</sup>

The WOTC program is considered cost-effective because subsidies are paid only when persons in the targeted groups are placed in jobs.<sup>94</sup> The majority of the cost to the federal government in providing hiring subsidies is through forgone revenue rather than appropriated funds.<sup>95</sup> “The benefit to taxpayers by moving targeted individuals into a job is meaningful,” and a “reasonable estimate is that those benefits are easily twice the magnitude of the maximum subsidy payment, suggesting that the WOTC quite likely more than pays for itself.”<sup>96</sup>

Studies of the effects of state and federal employment tax credits and the WOTC unfortunately are limited.<sup>97</sup> There is evidence that “employers who use the WOTC program are adjusting their hiring and employment practices to the targeted individuals,” and “it does not appear that they would have hired such individuals even without the program.”<sup>98</sup> There is a benefit realized from the subsidies, but it is generally not a windfall for most employers.<sup>99</sup>

In terms of potential negative effects, there is some concern that hiring subsidies may increase “churning.”<sup>100</sup> Churning is the practice of firing ineligible employees and replacing them with workers eligible for the hiring subsidy.<sup>101</sup> Because the WOTC is not an incremental subsidy, employers do not have to create new jobs in order to get the credit.<sup>102</sup> Therefore, the WOTC tends to favor companies that normally experience rapid labor turnover or companies that are willing to take part in the practice of churning.<sup>103</sup> However, the results of a report

91. CONG. RESEARCH SERV., *supra* note 82, at 5.

92. PETER CAPPELLI, ASSESSING THE EFFECT OF THE WORK OPPORTUNITY TAX CREDIT 6 (2011), available at <http://www.adp.com/tools-and-resources/compliance-connection/tax-incentives/resources/legislative-updates/~media/29092F9B946146FEB1FBE459105CD42E.ashx>.

93. *Work Opportunity Tax Credit*, U. S. DEP’T OF LABOR, EMP’T AND TRAINING ADMIN., <http://www.doleta.gov/business/incentives/opptax/> (last visited Oct. 16, 2015).

94. CAPPELLI, *supra* note 92, at 1.

95. CONG. RESEARCH SERV., *supra* note 82, at 11 n.18 (noting that spending for administration of the program generally has been less than \$20 million per fiscal year).

96. CAPPELLI, *supra* note 92, at 2.

97. CONG. RESEARCH SERV., *supra* note 82, at 11.

98. CAPPELLI, *supra* note 92, at 2.

99. *Id.*

100. See CONG. RESEARCH SERV., *supra* note 82, at 5, 12; Capelli, *supra* note 92, at 1.

101. See CONG. RESEARCH SERV., *supra* note 82, at 5.

102. *Id.*

103. *Id.*

by the General Accountability Office (GAO) issued in 2001 suggested that the likelihood of employers engaging in churning or displacement to maximize receipt of the WOTC is low.<sup>104</sup> The study found that most employers do not engage in churning because the practice is not cost-effective when the WOTC offsets less than one half of the employer's cost of recruiting, hiring, and training employees.<sup>105</sup>

A research study was conducted in 2007 on a single large employer operating in the State of Georgia.<sup>106</sup> The researchers identified employees within the company who were WOTC participants and compared them to employees in the same jobs who were not WOTC participants.<sup>107</sup> The study found that the WOTC workers were significantly less likely to leave the company than non-participants.<sup>108</sup> However, data collected showed that the length of the WOTC employee's tenure was only slightly longer than the non-participants.<sup>109</sup> The study found no evidence of "churning" through WOTC participants in order to maximize the subsidy.<sup>110</sup> If job tenure is at least in part a sign of good employee performance, then the WOTC participants in this study were slightly better off than their co-workers.<sup>111</sup> Such evidence is at least suggestive that if the WOTC participants are offered jobs, and remain employed, they may have an opportunity to prosper.<sup>112</sup>

## 2. Benefits of Tax Incentives to Taxpayers and Employers

The benefits to taxpayers include costs to the community in a broader sense including unemployment and crime rates, which are reduced when targeted individuals move into jobs.<sup>113</sup> Studies have shown that a 1% decline in unemployment is associated with as much as a 2% decline in property crime and that levels of incarceration also rise with unemployment.<sup>114</sup> These costs affect citizens both as individuals and as taxpayers.<sup>115</sup>

Some ex-offenders have valuable technical skills and they are willing to start in minimum wage jobs that offer opportunity for advancement.<sup>116</sup> Ex-felons tend to be loyal employees to those businesses that were willing to take a chance on hiring

104. U.S. GEN. ACCT. OFF., WORK OPPORTUNITY TAX CREDIT: EMPLOYERS DO NOT APPEAR TO DISMISS EMPLOYEES TO INCREASE TAX CREDITS 2 (2001) [hereinafter GAO].

105. *Id.*

106. J.M. Gunderson & Julie L. Hotchkiss, *Job Separation Behavior of WOTC Hires: Results from a Unique Case Study*, 81 SOC. SERV. REV. 317, 320 (2007).

107. *Id.* at 318.

108. *Id.* at 337.

109. *Id.*

110. CAPPELLI, *supra* note 92, at 15 (discussing Gunderson & Hotchkiss, *supra* note 106).

111. CAPPELLI, *supra* note 92, at 15.

112. *Id.*

113. *Id.* at 20.

114. See, e.g., S.D. Levitt, *The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation*, 111 Q. J. ECON. 319, 339 (1996); Steven Raphael & Rudolf Winter-Ebmer, *Identifying the Effect of Unemployment on Crime*, 44 J. L. & ECON. 259, 273 (2001).

115. CAPPELLI, *supra* note 92, at 2.

116. *FAQs: Untapped Labor Pool*, CAREERONESTOP BUS. CTR., <http://www.careeronestop.org/businesscenter/recruitandhire/hiringadiverseworkforce/rexoworks-FAQS.aspx?cl=true> (last visited Jan. 17, 2014).

them.<sup>117</sup> The experience to businesses of helping someone get back on his or her feet can be gratifying, and by hiring ex-felons, businesses will be bettering their communities and helping society as a whole.<sup>118</sup>

## B. Tax Incentive Programs in Other States

### 1. Illinois

In an effort to reduce crime and recidivism, particularly around the city of Chicago,<sup>119</sup> the Illinois legislature passed a state law increasing the state “income tax credit for businesses that hire ex-offenders from \$600 to \$1500 per employee.”<sup>120</sup> The employer may claim the credit for up to five years for employees who are hired within three years of their release from prison.<sup>121</sup> State Representative Arthur Turner (D-Chicago) who sponsored the bill was quoted as saying,

I am hopeful that employers will take advantage of this incentive and help provide new opportunities for men and women who deserve a second chance. Programs like this must be part of a creative approach to reducing recidivism and addressing the larger challenges of unemployment and violence in our communities.<sup>122</sup>

The Illinois program is similar to the WOTC and the legislation proposed by the State of Florida in that it provides for an income tax credit, however it allows employers to claim the credit for more than one year. Luke Halloran, a Manager of Dunkin Donuts in a high crime area of Chicago, whose place of business had been robbed several times in the past, hires former offenders who do not mind working in a dangerous neighborhood.<sup>123</sup> The experience was so positive for Halloran that when he opened up his own store he hired more former offenders, and now one-third of his employees are ex-offenders.<sup>124</sup> According to Halloran, “They never miss a day, get drug tested and will work any shift.”<sup>125</sup> Halloran does not claim that he has had no trouble with these employees, however, the ratio of good-to-bad is approximately 4:1; roughly the same as his employees without a past criminal record.<sup>126</sup>

117. MI. DEP’T OF CIV. RIGHTS, *supra* note 51.

118. *Id.*

119. Nancy Harty, *New Illinois Laws Aim to Help Ex-Felons Find Jobs*, CBS CHI., <http://chicago.cbslocal.com/2013/08/03/new-illinois-laws-aim-to-help-ex-felons-find-jobs/>.

120. *Id.*; 35 ILL. COMP. STAT. 5/216 (2013).

121. ILL. COMP. STAT. 5/216 (2013).

122. CCH Human Resources Compliance Library, *Human Resources Management – Compensation Guide*, WESTLAW 3992994 2 (2013).

123. Dyan Machan, *Why an Ex-Con Could Be a Great Hire*, MARKET WATCH, (Dec. 1, 2011, 10:50 PM) <http://www.marketwatch.com/story/small-business-why-an-excon-could-be-a-great-hire-1321303959143>.

124. *Id.*

125. *Id.*

126. *Id.*

## 2. Iowa

Employers in Iowa who hire ex-offenders<sup>127</sup> may claim additional tax deductions on their state income tax returns for 65% of the wages paid in the first twelve months of employment, with a maximum deduction of \$20,000 per employee.<sup>128</sup> Tax deductions differ from tax credits by reducing taxable income, whereas tax credits directly reduce a taxpayer's tax liability in the form of a subsidy.<sup>129</sup> The value of a tax deduction depends on the taxpayer's tax bracket and the value is limited to the filer's tax liability before applying the deduction.<sup>130</sup> A tax credit, in contrast, directly reduces a taxpayer's tax liability and as a result has the same value for all taxpayers who can claim their full value, and reduces taxes dollar for dollar.<sup>131</sup> For example, a taxpayer who is in the 25% tax bracket, and receives a \$1000 deduction, will lower his tax bill by \$250.<sup>132</sup> But a taxpayer who receives a \$1000 credit lowers his bill by the full \$1000, regardless of which tax bracket he is in.<sup>133</sup>

## 3. Maryland

The Long-Term Employment of Qualified Ex-Felons Tax Credit was a pilot program created by the State of Maryland to provide incentives to businesses that allowed an employer to claim a credit for two years after hiring a qualified ex-felon.<sup>134</sup> A qualified ex-felon is an individual certified by a local agency that has been convicted of a felony and is hired within one year of conviction or of release from prison.<sup>135</sup> For qualified employees hired between January 1, 2007, and January 1, 2012, the credit equaled 30% of the first \$6000 of wages in the first year and 20% of the first \$6000 of wages in the second year.<sup>136</sup> The program also provided employers with fidelity bonds covering a full year of employment.<sup>137</sup> Fidelity bonds, like those subsidized through the Federal Bonding Program, are insurance policies that protect employers from the costs associated with crime in the workplace.

127. See IOWA CODE § 422.35 (2013).

128. *Id.*

129. Elizabeth Rosen, *Tax Credits vs. Tax Deductions*, U.S. TAX CTR., <http://www.irs.com/articles/tax-credits-vs-tax-deductions> (last updated Aug. 28 2013).

130. *Id.*

131. *Id.*

132. Kimberly Lankford, *Tax Credit vs. Tax Deduction*, KIPLINGER, <http://www.kiplinger.com/article/taxes/T054-C001-S001-tax-credit-vs-deduction.html#6Zcstjk17cRKpW3A.99> (last visited Jan. 17, 2014).

133. *Id.*

134. See MD. CODE ANN., LAB. & EMPL., § 11-702 (West. 2013). See also MD. INCOME TAX ADMIN. RELEASE NO. 39. LONG-TERM EMPLOYMENT OF QUALIFIED EX-FELONS TAX CREDIT. (2012), available at [http://taxes.marylandtaxes.com/Resource\\_Library/Tax\\_Publications/Administrative\\_Releases/Income\\_and\\_Estate\\_Tax\\_Releases/ar\\_it39.pdf](http://taxes.marylandtaxes.com/Resource_Library/Tax_Publications/Administrative_Releases/Income_and_Estate_Tax_Releases/ar_it39.pdf) [hereinafter MITA].

135. MITA, *supra* note 134.

136. *Id.*

137. *Id.*

## V. THE FEDERAL BONDING PROGRAM

Employers concerned with crime in the workplace may protect themselves by taking part in the Federal Bonding Program.<sup>138</sup> The Federal Bonding Program provides employers with insurance coverage at no cost to the employer as incentive to hire individuals with criminal histories who are qualified but fail to get jobs because of their background.<sup>139</sup> The Program was created “to help alleviate employers’ concerns about hiring qualified”, yet risky, potential employees.<sup>140</sup> The bonds are “insurance policies that protect employers in” the “case of theft, forgery, larceny, or embezzlement of money or property by an employee who is covered by the bond.”<sup>141</sup> The bond insurance will reimburse the employer for any loss due to employee theft with no deductible amount—meaning it covers one hundred percent of the liability.<sup>142</sup> The bonds are available to any employer in any state, and the process is streamlined which makes processing quick and user-friendly for employers.<sup>143</sup> While the Federal Bonding Program only addresses the issue of workplace theft, and does not address negligent hiring liability or workplace violence, it still offers employers some peace of mind and further incentive to hire ex-offenders.

## VI. RESOURCES FOR EMPLOYERS AND EX-OFFENDERS

Public, private, and non-profit resources are available to employers who wish to employ ex-offenders and to ex-offenders who are seeking employment. The National Helping Individuals with criminal records Reenter through Employment (H.I.R.E.) Network was established by the Legal Action Center, a non-profit public policy advocate,<sup>144</sup> to increase the number of job opportunities available to people with criminal records.<sup>145</sup> It is a national clearinghouse of information that also seeks to assist employers in reducing liability risks and complying with state and federal laws that govern the hiring of people with criminal records.<sup>146</sup>

In addition to its goal of public policy change, the H.I.R.E. Network:

138. *The Federal Bonding Program*, MCLAUGHLIN CO., <http://www.bonds4jobs.com/program-background.html> (last visited June 22, 2014) (the U.S. Department of Labor created the Federal Bonding Program in 1966 as an employer job-hire incentive that guaranteed the job honesty of at-risk job seekers including ex-offenders and other hard-to-place job applicants).

139. *Id.* (noting that traditional, commercially purchased insurance bonds usually will not cover at-risk persons because they are designated by insurance companies as “not bondable”).

140. *Federal Bonding Program*, NAT’L HIRE NETWORK, <http://hirenetwork.org/content/federal-bonding-program> (last visited Jan. 17, 2014.)

141. *Id.*

142. *The Federal Bonding Program*, *supra* note 138.

143. *Id.* (There are no special application forms for job seekers to complete, local staff instantly issue bonds to employers, there are no papers for employer to submit or sign to obtain free bond incentive for job hire, no follow-up or termination actions required by bond issued, no age requirements other than legal working age in the state).

144. *Who We Are*, LEGAL ACTION CTR., [http://lac.org/index.php/lac/category/about\\_us](http://lac.org/index.php/lac/category/about_us) (last visited Jan. 17, 2014).

145. *About Us*, NAT’L HIRE NETWORK, <http://www.hirenetwork.org/content/about-us> (last visited Jan. 17, 2014).

146. *Id.*



promotes labor market opportunities for qualified people with criminal records; promotes research that strengthens workforce development and criminal justice systems to improve practice; effectively uses the media to reduce the stigma associated with having a criminal record in the labor market; and improves correctional policies and programs to provide more educational opportunities, better job preparation and skills training, and better transitional services that will translate to increased employment opportunities for ex-prisoners returning to their communities.<sup>147</sup>

Another program known as The Next Step maintains a database called the Cooperative of Felon Friendly Employers (COFFE), a comprehensive nationwide network of employers that are willing to hire ex-felons, newly released federal and state felons who are seeking employment, and the agencies that manage the felons after release.<sup>148</sup> The service is free to participating agencies and residents.<sup>149</sup> COFFE provides support to ex-felons by matching them with “felon-friendly” employers; and provides support to businesses by providing assistance and information on the financial benefits of hiring an ex-felon.<sup>150</sup>

Career Source Central Florida (CSCF) describes itself as the region’s workforce expert.<sup>151</sup> It provides workshops for ex-offenders that are trying to re-enter the workforce.<sup>152</sup> The workshops provide information to job seekers on increasing education, skills, and experience; job search strategies; training opportunities; and apprenticeships.<sup>153</sup> In addition, the WCF helps employers with recruiting, retention, training resources, and information on the WOTC.<sup>154</sup>

## VII. REVIVE FL HB 121 AND INCREASE PROPOSED TAX CREDITS FOR HIRING EX-FELONS

The proposed legislation offering tax incentives in the form of tax credits to businesses that hire ex-felons has never made it to a vote before the Florida legislature.<sup>155</sup> Each of the proposed bills—HB 121 (2015), HB 383 (2014), HB 513

147. *What We Do*, NAT’L HIRE NETWORK, <http://www.hirenetwork.org/content/what-we-do> (last visited Jan. 17, 2014).

148. THE NEXT STEP, <https://www.thenextstep99.com> (last visited Jan. 17, 2014). *See also The Next Step Expands Efforts to Increase Ex-offender Job Placement*, JAILS TO JOBS, <http://jailstojobs.org/wordpress/the-next-step-expands-efforts-to-increase-ex-offender-job-placement> (last visited Jan. 17, 2014).

149. *About CoFFE*, THE NEXT STEP, <https://www.thenextstep99.com/about-coffe> (last visited Jan. 17, 2014).

150. *For Employers*, THE NEXT STEP, <https://www.thenextstep99.com/employer-home> (last visited Jan. 17, 2014).

151. *2013-2014 Annual Report*, CAREERSOURCE CENT. FL., [http://www.careersourcecentralflorida.com/wp-content/uploads/2015/09/CSCF\\_AnnualReport\\_FINAL-2013-2014.pdf](http://www.careersourcecentralflorida.com/wp-content/uploads/2015/09/CSCF_AnnualReport_FINAL-2013-2014.pdf) (updated Oct. 21, 2015).

152. *Id.*

153. *Id.*

154. *Businesses*, CAREERSOURCE CENT. FL., <http://www.careersourcecentralflorida.com/businesses/>.

155. *See* H.R. 121, 2015 Fla. Leg., Reg. Sess. (Fla. 2015) (proposed FLA. STAT. § 220.197) (died in Finance & Tax Subcommittee on April 28, 2015).

(2013), and HB 199 (2012)—all died in the Finance & Tax Subcommittee.<sup>156</sup> The sponsors of the Florida bill should consider offering a higher tax credit and making the credit available for more than one year, making it more meaningful to businesses that are willing to assume the risk of hiring a person who has a prior criminal record. This author would suggest setting the minimum available tax credit to \$1000 *and* increasing the amount of the tax credit as the hourly wage and number of hours worked increases (like the WOTC)<sup>157</sup> up to a maximum amount of \$2000. Also, like the State of Illinois, allow the employer to claim the credit for up to five years for employees who are hired within three years of their release from prison.<sup>158</sup> This author suggests that, by increasing the amount of the tax credit and allowing employers to receive it for more than one year, employers would have a greater incentive to hire former offenders and the program would likely encourage employee retention.

### VIII. CONCLUSION

The solution to the problem of ex-felon recidivism is clear.<sup>159</sup> The State of Florida should remove the barriers to employment by providing incentives to employers to hire ex-felons.<sup>160</sup> By providing ex-felons with employment opportunities, the State of Florida will put ex-felons to work and keep them away from crime and out of prison, saving the state and the federal government money and reducing the cost of incarceration.<sup>161</sup> Persons with felony convictions who are released from prison have repaid their debt to society and deserve a second chance at starting their lives over.<sup>162</sup> However, with limited opportunities for employment, ex-felons who cannot find jobs are more likely than not to commit new crimes and return to prison.<sup>163</sup>

Legislation, like proposed Florida HB 121, that provides incentives to employers to hire ex-felons is one small step in an attempt to solve an enormous societal problem.<sup>164</sup> The proposed legislation by the State of Florida addresses

156. See *id.*; See also H.R. 383, 2014 Fla. Leg., Reg. Sess. (Fla. 2014) (proposed FLA. STAT. § 220.197) (died in Finance & Tax Subcommittee on Friday, May 2, 2014); H.R. 513, 2013 Fla. Leg., Reg. Sess. (Fla. 2013) (died in Finance and Tax Subcommittee, May 3, 2013); H.R. 199, 2012 Fla. Leg., Reg. Sess. (Fla. 2012) (died in Finance & Tax Committee, March 9, 2012).

157. *Employers*, U.S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., <http://www.doleta.gov/business/incentives/opptax/wotcEmployers.cfm/> (last visited June 22, 2014) (under the WOTC program, an employer that hires an ex-felon may claim a tax credit equal to 25% of the eligible new hire's first year wages if the individual works at least 120 hours, up to the maximum amount of \$2400. If the individual works at least 400 hours, the employer may claim a tax credit equal to 40% of the employee's first year's wages, up to the maximum amount of \$2400).

158. 35 ILL. COMP. STAT. 5/216 (2013).

159. *Emerging Solutions to Help Reduce Recidivism*, RAMSELL CORR. 11 (2011).

160. Ctr. for Study Soc. Pol'y, *supra* note 16, at 2.

161. Williams, *supra* note 25, at 25.

162. Charles Rangel, *Advancing the Dream Through Education*, HUFFINGTON POST (Apr. 4, 2013), [http://www.huffingtonpost.com/rep-charles-rangel/mlk-assassination-anniversary\\_b\\_3014441.html](http://www.huffingtonpost.com/rep-charles-rangel/mlk-assassination-anniversary_b_3014441.html).

163. Uggem & Staff, *supra* note 12, at 2.

164. H.R. 121, 2015 Fla. Leg., Reg. Sess. (Fla. 2015) (proposed FLA. STAT. § 220.197 (2015)) (died in Finance and Tax Subcommittee on April 28, 2015).

employment challenges for newly released prisoners,<sup>165</sup> however it does not even contemplate the increasing number of ex-offenders that have been out of prison for years and still have difficulty finding employment.<sup>166</sup> While this problem is outside the scope of this article, in order to create change we must start somewhere.

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165. *Id.*

166. Travis *supra* note 12, at 31.